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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the South Asia Human Rights Documentation Centre, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 December 1999]

GE.00-10328 (E)

The violation of economic and social rights of the legally identified enemies of Bangladesh

1. The United Nations Declaration on the Right to Development defines development as a comprehensive economic, social and cultural process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. The Declaration identifies the right to development as an inalienable human right by virtue of which every individual is entitled to participate in, contribute to, and enjoy economic, social and cultural and political development in which all human rights and fundamental freedoms can be fully realized.

2. Yet, when the State itself adopts discriminatory laws to deny equal opportunities to the minorities, the right to development loses its meaning. The South Asia Human Rights Documentation Centre (SAHRDC) has been concerned about such denial of equal opportunities. The countries of the South, including Bangladesh, often raise the issue of the right to development. Yet, a cursory look reveals how the Governments deny equal opportunities. SAHRDC in particular would like to highlight the discrimination against the Hindu minority in Bangladesh through the Enemy (Vested) Property Act.

3. In 1965, after the Indo-Pakistan War, the then Government of Pakistan introduced the Enemy Property (Custody and Registration) Order II of 1965. It identified the minority Hindus as enemies and it was an instrument to take away lands from the Hindu minority labelled as supporters of India.

4. After independence from Pakistan, the President of Bangladesh in his Order No. 29 of 1972 changed the nomenclature to Vested Property Act. Under this order, "properties" means "properties of any kind, movable or immovable, and includes any right or interest in such properties, debt or actionable claim, any security or negotiable instrument, and any right under a contract and any industrial or commercial undertaking" and "security" includes share, scrip, stock, bond, debenture or debenture stock or other marketable security of a like nature in or of any body corporate and Government securities. Clause 2 of the Order further states, "Nothing contained in this Order shall be called in question in any court".

5. The Order of the President and the Enemy (Vested) Property Act have hence not been subjected to any judicial review. However, the minority Hindus continue to be deprived of their economic rights. The Law Ministry of Bangladesh in a memo dated 4 November 1993 to all deputy commissioners directed that the census list of vested properties be verified. Under this directive the Government formed the Thana (Police Station) Vested Property Verification Committee, empowered to verify that the listed properties which have not yet been properly recorded and/or leased out are in fact vested properties. Rather than verifying the existing land, the government authorities grabbed more land. The property belonging to 61 Hindu minority families in Ashefpur and Chawkjara villages were identified as "enemy properties" under the directive.[1]

6. The estimated total number of Hindu households affected by the Act is over 1 million, and the estimated total land of which they were dispossessed is over 1 million acres. About 30 per cent of the Hindu households, or 10 out of every 34 Hindu households, are the victims of the Act. These estimates, although based on various plausible assumptions, should be considered as sufficiently indicative of the gravity of the situation.

The missing Hindu population - a major effect of Enemy (Vested) Property Act

7. According to the Association for Land Reform and Development (ALRD), an NGO based in Dhaka which conducted a comprehensive study on the Enemy (Vested) Property Act in 1997, the implementation of the Enemy (Vested) Property Act has accelerated the process of mass out-migration of the Hindu population since the mid-1960s. The estimated size of the out-migration (the so-called "missing Hindu population") from 1964 to 1991 was 5.3 million, or 538 persons each day since 1964, with as many as 703 persons per day from 1964 to 1971. If these estimates are close to reality, then it would not be an exaggeration to conclude that the Enemy (Vested) Property Act was an effective tool for the removal of the Hindu minorities from their motherland [2]

8. ALRD has estimated the size of Hindu population given a "no out-migration" scenario, on the basis of the following assumptions: (a) between 1961 and 1991 the mortality rates for all religious communities were similar, (b) during the same period the fertility rate among the Hindu population was 13 per cent less than among the Muslim population (estimate based on contraceptive-use rates). According to the information in the population census, the average annual growth rates of the Muslim population was 3.13 per cent for 1961-1974, 3.08 per cent for 1974-1981, and 2.20 per cent for 1981-1991. Assuming a 13 per cent lower fertility rate for the Hindus compared to the Muslims, the average annual growth rates in the Hindu population under the "no out-migration" situation would have been 2.72 per cent during 1964-1971, 2.68 per cent during 1971-1981 and 1.92 per cent during 1981-199[sic]. By extrapolating from these, the Hindu population in 1971 would have been 11.4 million, instead of 9.6 million as reported in the official documents. The Hindu population in 1981 would have been 14.3 million (the 12.5 million of 1981 plus 1.8 million "missing" during 1964-1971), instead of 10.6 million as reported in the 1981 census document. Similarly, had there been no out-migration, the Hindu population in 1991 would have been 16.5 million (12.8 million, as in 1991, plus 3.7 million "missing" during 1964-1981), instead of 11.2 million as reported in the 1991 census document. Thus, the estimated total "missing" Hindu population during 1964-1991 was 5.3 million, i.e. 196,296 Hindus "missing" every year since 1964. In other words, if the out-migration of the Hindu population was caused mainly by communal disharmony resulting from the Enemy (Vested) Property Act, the approximate size of the "missing" Hindu population would be 538 persons each day since 1964.

9. The Hindu minority flee from Bangladesh to neighbouring India after their lands are grabbed by the Government. When people lose their lands, they lose their livelihood. It affects their social security, health, education, standard of living and religious freedom. The Hindus are immediately beset by poverty. Yet, for the last three decades, no Government in Bangladesh has considered repeal of the Act, despite the fact that no Government that believes in equality can justify such a discriminatory law which makes the minority its victims.

10. Holding elections is not the only yardstick for measuring democracy or the health of a society. If gross violation of the economic rights of the Hindu minority is used as a yardstick, tyranny of the majority rules in Bangladesh. Any society which claims to be civil and democratic should have no place for such a discriminatory Act as the Enemy (Vested) Property Act. Repeated calls for its repeal from Hindu religious minority leaders have failed to evoke any response from the Government of Bangladesh.

Notes

[1] M.S. Parishad, The State of Human Rights 1993 - Bangladesh, Dhaka, 1994.

[2] A. Barker et al., Political Economy of the Vested Property Act in Rural Bangladesh, Association for Land Reform and Development, Dhaka, 1997.